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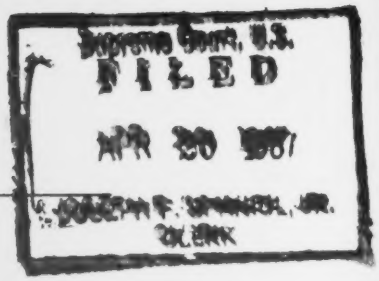

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MBANK CORPUS CHRISTI, N.A.,
Petitioner

-vs-

JUAN DAVILA, et ux,
Respondents

MBANK CORPUS CHRISTI, N.A.,
Petitioner

-vs-

AMANDO G. SALAIZ, et ux,
Respondents

MBANK CORPUS CHRISTI, N.A.,
Petitioner

-vs-

FRANCISCO NUNEZ, JR., et ux,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF TEXAS FOR THE THIRTEENTH JUDICIAL DISTRICT

PETITION FOR WRIT OF CERTIORARI

TODD A. HUNTER
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500 North Water Street
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(512) 884-3551

Attorneys for Petitioner

NO.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MBANK CORPUS CHRISTI, N.A.,
Petitioner

-vs-

JUAN DAVILA, et ux,
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-vs-

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MBANK CORPUS CHRISTI, N.A.,
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-vs-

FRANCISCO NUNEZ, JR., et ux,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF TEXAS FOR THE
THIRTEENTH JUDICIAL DISTRICT

PETITION FOR WRIT OF CERTIORARI

Petitioner MBank Corpus Christi, N.A, respectfully prays that a writ of certiorari issue to review the decision of the Appellate Court of Texas for the Thirteenth Judicial Circuit in the above-captioned cause.

QUESTIONS PRESENTED

1. Are the Texas statutes placing a ceiling on the finance charge that lenders may receive on home improvement loans and prohibiting lenders from obtaining first liens on the subject property preempted by the National Housing Act and implementing HUD regulations, with respect to loans insured by HUD under § 2 of Title I of the National Housing Act, 12 U.S.C. § 1703?

2. Do the Texas statutes placing a ceiling on the finance charge that lenders may receive on home improvement loans and prohibiting lenders from obtaining first liens on the subject property unduly restrict

interstate commerce in violation of the policies underlying the Commerce Clause of the United States Constitution?

STATEMENT AS TO THE PARTIES

Petitioner is MBank Corpus Christi, N.A., formerly known as Corpus Christi National Bank. Respondents are Juan and Olivia Davila, Amando and Maria Salaiz, and Francisco Nunez, Jr., and Rosa Elena Nunez, Plaintiffs and Appellants below. Siding Distributors of South Texas is also a Respondent herein and was a Co-Defendant in the trial court proceeding instituted by Francisco Nunez, Jr., and Rosa Elena Nunez.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

DECISIONS BELOW

In all three cases involved herein, the trial judge granted Petitioner's Pleas in Abatement and Motions to Dismiss for Lack of Jurisdiction. Those Orders are reproduced at pages A-3 to A-9 of the Appendix. On appeal, the Court of Appeals for the Thirteenth Supreme Judicial District of Texas reversed and remanded the decisions of the trial court. The Appellate Court opinion is reproduced at pages A-18 to A-22 of the Appendix. The Supreme Court of Texas denied Petitioner's Application for Writ of Error (reproduced at pages A-1 to A-2 of the Appendix).

JURISDICTION OF THIS COURT

The orders of the trial court granting Petitioner's Pleas in Abatement and Motions

to Dismiss were granted on October 30, 1985. Respondents appealed from that order to the Appellate Court of Texas for the Thirteenth Judicial District which reversed and remanded on August 29, 1986. Petitioner thereupon filed an Application for Writ of Error to the Supreme Court of Texas which was denied on January 21, 1987. With the denial of Petitioner's Application for Writ of Error, the judgment of the Appellate Court became the decision of the highest court in the state system in which review might be sought. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

U.S. Constitution

Article I, Section 8, Clause 3:

> "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes...."

Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

National Housing Act, 12 U.S.C. § 1735f-7(a)(1)

> "The provisions of the constitution of any State expresssly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under title I or II of this Act.

Housing and Urban Development Regulations, 24 CFR § 201.24(a)

> "Any property improvement loan ... in excess of $2,500.00 shall be secured by a recorded lien on the improved property...."

Statutes

Texas Consumer Credit Code

Article 5069-1.09:

"Any loan insured by the Federal Housing Administration, pursuant to the provisions of the National Housing Act ... its amendments and supplements ... may bear such rate of interest, or be discounted at such rate as is permitted under the National Housing Act, its amendments and supplements, and the regulations promulgated from time to time by the Federal Housing Administration or its successor...."

Article 5069-6.01(h):

"'Time-price differential,' however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time."

Article 5069-6.02(9)(a):

"Notwithstanding provisions of any other law, a retail installment contract payable in substantially equal successive monthly installments beginning one month from the date of the contract may provide for, and the seller or holder may then charge, collect and receive the time-price differential which shall not exceed an amount determined in accordance with the following schedule:

(i) On so much of the principal balance as does not exceed Five Hundred Dollars, Twelve Dollars per One Hundred Dollars per annum;

(ii) On so much of the principal balance as exceeds Five Hundred Dollars, but is not in excess of One Thousand Dollars, Ten Dollars per One Hundred Dollars per annum;

(iii) On so much of the principal balance as exceeds One Thousand Dollars, Eight Dollars per One Hundred Dollars per annum."

Article 5069-6.05(7):

"No retail installment contract or retail charge agreement shall provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time-price differential does not exceed an annual percentage rate permitted under this chapter or article 1.04 of this Title."

STATEMENT OF THE CASE

In each of the three cases below, a contractor and Respondent-home owner executed

a contract for home improvement services. Each of the Respondents, except Respondent Siding Distributors of South Texas, executed a U.S. Department of Housing and Urban Development, Housing-Federal Housing Commissioner Credit Application for property improvement loans which was submitted by the contractor to Petitioner, MBank Corpus Christi, N.A., f/k/a Corpus Christi National Bank (Petitioner-Bank). Each Respondent, except Respondent Siding Distributors of South Texas, then executed a Note based on the National Housing Act and its regulations and a Department of Housing and Urban Development Housing-Federal Housing Commissioner Completion Certificate for property improvement loan under FHA Title I. Petitioner-Bank then approved the loans and placed liens on the homeowners' properties. As evidenced by the original pleadings of Respondents (reproduced at pages A-23 to A-37 of the Appendix), two of the three Respondent-couples had no prior liens on their property, so

the lien Petitioner-Bank recorded was the first lien. Respondents, Plaintiffs in these lawsuits, contend that the interest rates and the liens violated certain Texas statutory provisions.

In the trial court, Petitioner-Bank argued that the transactions at issue are loans under Chapter 1 of the Texas Consumer Credit Code, which are exempt from the statutory cap on interest because they are federally insured, and for which the Texas Code does not prohibit first liens. Petitioner-Bank also argued that Respondents knowingly executed documents clearly showing that they entered into a federal loan transaction. Alternatively, Petitioner-Bank argued that if these transactions were Chapter 6 transactions, federal law preempts both the Chapter 6 time-price differential cap and the prohibition on first liens as applied to Title I transactions.

Respondents argued that the transactions are retail installment contracts subject

to the Chapter 6 of the Texas Consumer Credit Code, that the finance charge on the contracts exceeds the statutory cap for time-price differentials, and that federal law did not preempt Chapter 6 as applied to Title I loans. The two Respondent couples on whose real estate Petitioner-Bank had placed first liens also argued that the liens were prohibited by Chapter 6. The trial court granted Petitioner-Bank's Motion to Dismiss Respondents' Complaints. The Appellate Court reversed and remanded. The Supreme Court of Texas denied Petitioner-Bank's Application for Writ of Error.

PRESENTATION OF ISSUES IN COURTS BELOW

The issue decided by the trial courts below was whether or not the Texas District Courts had jurisdiction over the transactions made the bases of Plaintiff's lawsuits. Petitioner-Bank contended in its Pleas in Abatement and Motions to Dismiss for Lack of Jurisdiction that the subject transactions were federal and not state transactions,

that Chapter 6 et seq of the Texas Consumer Credit Code did not apply to the subject transactions, that the Title I home improvement loans were not subject to state rules and regulations, and that Respondents improperly filed their lawsuits in the State of Texas District Courts. The same issue was raised both at the Appellate level and in Petitioner-Bank's Application for Writ of Error to the Supreme Court of Texas.

ARGUMENT

I.

ALLOWING THE STATE OF TEXAS TO IMPOSE INTEREST CEILINGS AND PROHIBIT FIRST LIENS IN VIOLATION OF THE NATIONAL HOUSING ACT AND HUD REGULATIONS VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

Respondents contend that the transactions involved herein should be treated as "retail installment contracts" under Chapter 6 of the Texas Consumer Credit Code. If the transactions are treated as retail installment contracts,

then the finance charge assessed by Petitioner-Bank is classified as a "time-price differential." TEX.CON. CREDIT CODE art. 5069-6.01(h). Chapter 6 of the Texas Consumer Credit Code provides for a cap or maximum amount of interest which may be charged on retail installment contracts. Chapter 6 does not contain a provision excluding loans guaranteed or insured by HUD from the cap. Chapter 6 also prohibits first liens on retail installment contracts. TEX.CON. CREDIT CODE art. 5069-6.05(7). Therefore, if the transactions are subject to Chapter 6 of the Texas Consumer Credit Code, this court must decide whether the restrictions are preempted by federal law insofar as they are applied to Title I loans. If the court finds that the transactions are retail installment contracts subject to Chapter 6, then those Chapter 6 provisions capping time-price differentials and prohibiting first liens are preempted by federal law with respect to Respondents' transactions

and all other transactions insured by HUD pursuant to Title I of the National Housing Act.

Under the supremacy clause of the United States Constitution (art. VI, clause 2), there are three ways in which state law may be preempted by federal law. First, federal statutes may expressly preempt state law. Hillsborough County v. Automated Medical Laboratories, Inc., 105 S.Ct. 2371, 2375 (1985) citing Jones v. Rath Packing Co., 97 S.Ct. 1305, 1309 (1977). Second, preemption may be inferred where a scheme of federal regulation is so comprehensive as to leave no room for supplementary state regulation [Id. citing Rice v. Santa Fe Elevator Corporation, 67 S.Ct. 1146, 1152 (1947)] or where the field is one in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Id. citing Heinz v. Davidowitz, 61 S.Ct. 399 (1941). Finally,

state law will be preempted to the extent that it actually conflicts with federal law. "Such a conflict arises when 'compliance with both federal and state law regulations is a physical impossibility,' ... or when state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'...." Hillsborough citing Florida Lime & Avocado Growers, Inc., v. Paul, 83 S.Ct. 1210, 1217-1218 (1963) and Heinz v. Davidowitz, supra, 61 S.Ct. at 404.

In the present case, the Texas cap on time-price differentials is expressly preempted by federal law. The National Housing Act (the Act) specifically exempts loans, mortgages or advances "insured under title I or II of this Act" from provisions of the Constitution or the laws of any state expressly limiting the rate or amount of interest, discount points or "other charges" which may be charged on such loans. 12 U.S.C. § 1735f-7. The Texas ceiling on time-price differentials

is exactly the type of "other charges" which the Act intends to cover. In fact, the United States Government, in its amicus brief filed in the Appellate Court below, cites a conference report which clearly indicates that the preemption provisions of the Act apply to "installment credit sales obligations." See H.R. Rep. No. 706, 96th Cong., 1st Sess. 60, reprinted in 1979 U.S. CONG. & AD. NEWS, 2402, 2419 (Appendix, pages A-38 to A-47). "Retail installment contracts" which are subject to the Texas limitation on time-price differentials are identical to the "installment credit sale obligations" to which the conference report refers. Both terms denote contracts extended by sellers of merchandise, payable over a period of time in installments. Thus, applying Chapter 6 of the Texas Consumer Credit Code to the transactions at issue necessarily renders the ceiling on time-price differentials expressly preempted by federal law applicable to Title I loans. Hillsborough County, supra.

In addition to the above, the transactions which form the bases of Respondents' lawsuits are also governed wholly by federal law in that the transactions were purely federal transactions governed extensively by the National Housing Act and HUD regulations. Respondents knowingly completed federally-prepared forms including completion certificates, contracts, National Housing Act notes and a Title I advance notices, all of which plainly evidence the federal nature of Respondents' loan transactions. "Where Congress does not affirmatively declare its instrumentalities or properties subject to regulation, the federal function must be left free of regulation." Hancock v. Train, 96 S.Ct. 2006, 2013 (1976).

While the ceiling on time-price differentials is expressly preempted by federal law and by federal preemption of the field, the Texas statutory prohibition against first liens is preempted by virtue of its conflict with federal regulation. See Hillsborough County

at 2375, holding that "state laws can be preempted by federal regulations as well as by federal statutes." HUD regulations provide that Title I loans of more than $2,500.00, like the transactions at issue, "shall be secured by a recorded lien upon the improved property." 24 CFR §201.24(a). The stated purpose for this regulation is that acquiring liens on all Title I loans in excess of $2,500.00 should "enhance the collectibility of loans and reduce credit insurance claims by insured lenders." 47 F.R. 58240 (Dec. 30, 1982). In the instant case, the Original Petitions of Respondents-Plaintiffs Davila and Nunez clearly establish that the liens taken on the residential real properties the subjects of those transactions were first liens. (Appendix, pages A-23 to A-28 and A-33 to A-37). When Texas law prohibiting first liens prevents a Title I lender from securing a lien on the property, that state law is in direct conflict with federal law. If compliance

with both state law and the federal regulation is a "physical impossibility," the state law is preempted. Hillsborough County at 2375. In the instant case, it is impossible for Petitioner-Bank to observe the Texas prohibition on first liens without violating the HUD regulation requirement to record liens on the Respondents' property where such liens would be first liens.

II.

ALLOWING THE STATE OF TEXAS TO IMPOSE INTEREST CEILINGS AND PROHIBIT FIRST LIENS IN VIOLATION OF THE NATIONAL HOUSING ACT AND HUD REGULATIONS WOULD UNDULY RESTRICT INTERSTATE COMMERCE

The power to regulate interstate commerce is vested in Congress by the commerce clause of the United States Constitution. U.S. Constitution, art. I, section 8, clause 3. This is an affirmative grant of power, which necessarily imposes upon the states a corresponding limitation of the state's power to legislate in subject

areas where the primary responsibility has been assumed by Congress. A & P Tea Company v. Cottrell, 96 S.Ct. 923 (1976). When a conflict or overlap between state and federal law occurs, a judicially fashioned balancing test must be applied to determine whether local interests outweigh national interests. Assuming arguendo that Congress has not explicitly preempted the regulation of federally insured home improvement loans, the court must apply a balancing test to determine whether the state law is "excessive in relation to the putative local benefits." Pike v. Bruce Church, Inc., 90 S.Ct. 844 (1970); Edgar v. Mite Corporation, 102 S.Ct. 26 (1982). In the present case, Petitioner vigorously asserts that the Texas statutes in question are indeed excessive and unduly restrict interstate commerce by discouraging lenders with state law caps on finance charges and by precluding all new Title I loans in Texas in which a lender could not comply with HUD's

requirement to obtain a lien on the borrower's real property because the lien would be a first lien prohibited by state law.

The balancing test by which the "delicate adjustment of conflicting claims"[1] is to be made was enunciated in Hughes v. Oklahoma, 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979). In an opinion by Justice Black, the Court stated:

> Under that general rule we must inquire (1) whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; (2) whether the statute serves a legitimate local purpose; and, if so, (3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce. The burden to show discrimination rests on the party challenging the validity of the statute, but "[w]hen discrimination against commerce ... is demonstrated,

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[1] (H.P. Hood & Sons, Inc., v. DuMond, 336 U.S. 525, 553, 69 S.Ct. 657, 679 (1949) dissenting opinion by Justice Black)

> the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." Hughes, supra at 99 S.Ct. 1736, quoting Hunt v. Washington Apple Advertising Commission, 433 U.S. 333, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977).

Applying the three elements of the Hughes balancing test to the facts of the instant case, it is clear that applying the Texas cap on time-price differentials and prohibition on first liens to the transactions at issue has much more than an incidential affect on interstate commerce in light of the fact that fourteen percent (14%) of all Title I loans made nationwide are made to Texas borrowers.[2] Additionally, it has been held that "when Congress determines that a specific activity or class of activity has a real and substantial affect on commerce, the courts will uphold that determination if it has

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[2] Figures supplied by HUD.

a reasonable basis. City of Centralia v. Federal Energy Regulatory Commission, 661 F.2d 789 (9th Cir. 1981) citing Katzenbach v. McClung, 85 S.Ct. 383 (1964). Congress has clearly determined that federally insured home improvement loans have a substantial affect on commerce as is illustrated by section 1735f-7 of the National Housing Act, Title I, 12 U.S.C. §1703 et seq, which provides that any conflicting state regulations are preempted. The second element of the Hughes test is perhaps less easily resolved than the first. While it is doubtful that regulating federally insured home improvement loans is of local interest, Petitioner recognizes that there is some case law to the effect that regulations concerning banks and banking are matters of local concern. Therefore, assuming for purposes of argument that the Texas statutes in question regulate matters of local concern, the third element of the Hughes test must be applied. As stated above, the third element of the Hughes test

inquires as to whether an alternative means of regulation which would not discriminate interstate commerce is available to promote the local concern at issue. The obvious alternative means of regulation in the present case would be to exempt Title I loans from the Chapter 6 restrictions. This alternative was used in Chapter 1 of the Texas Consumer Credit Code indicating the Legislature's belief that such an exemption would not interefere with the local concerns governed by the Texas Consumer Credit Code. Such an exemption would in fact further aid consumers by providing incentive to lenders to make home improvement loans which will be federally insured. Thus, applying the standards enunciated by this Court in Hughes v. Oklahoma requires that Texas laws yield to the federal policies underlying the commerce clause of the United States Constitution.

CONCLUSION

The opinion below manifests a clear disregard of the decisions of this Court, and, if permitted to go unchallenged, will stand in opposition to the standard of uniformity which the supremacy clause and the commerce clause of the United States Constitution and the policies laid down by this Court dictate for the protection and enforcement of federal rights by state courts. For these reasons, a Writ of Certiorari should issue to review the decision of the Court of Appeals for the Thirteenth Supreme Judicial District of Texas in this case, and, on review, the opinion and judgment below should be reversed and the cause remanded with directions to reinstate the decisions of the trial judges in their entirety. Alternatively, Petitioner

requests such other and different relief as may seem just to this Court.

Respectfully submitted,

KLEBERG, DYER, REDFORD & WEIL
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(512) 884-3551

By: _____
Todd A. Hunter

Attorneys for Petitioner,
MBANK CORPUS CHRISTI, N.A.

1/1417.1400A

APPENDIX

IN THE SUPREME COURT OF TEXAS

No. C-5993 January 21, 1987

CORPUS CHRISTI NATIONAL BANK ET AL.)
)
vs.)
)
JUAN DAVILA ET AL.)

From Nueces County,

Thirteenth District

Application of petitioners for writ of error to the Court of Appeals for the Thirteenth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Appeals, it is ordered that said applciation be, and hereby is, refused.

It is further ordered that applicants, Corpus Christi National Bank et al., pay all costs incurred on this application.

- - - - -

I, MARY M. WAKEFIELD, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of the sSupreme Court of Texas

in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 27th day of April, 1987.

MARY M. WAKEFIELD, Clerk

By s/ Mary M. Wakefield, Deputy

NO. 84-310-F

JUAN H. DAVILA, ET UX	§	IN THE DISTRICT COURT
	§	
VS.	§	214TH JUDICIAL DISTRICT
	§	
COASTAL ALUMINUM DISCOUNT CO., ET AL	§	NUECES COUNTY, TEXAS

O R D E R

On 30 October, 1985, the Court considered the Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction filed in this cause by Defendant Corpus Christi National Bank. All counsel agreed to the waiver of a hearing on the Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction. The Court, having examined the pleadings and the evidence, is of the opinion and finds that Defendant Corpus Christi National Bank is entitled to its Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant Corpus Christi National Bank's Plea in Abatement and Motion to Dismiss for Lack of Jurisdiction be granted and that

Defendant recover all costs on its behalf expended of and from Plaintiffs Juan H. and Olivia Davila for which let execution issue, subject to Plaintiffs Juan H. and Olivia Davila repleading their cause of action under federal law, regulations and rules not later than fifteen days from the date of this order in which event this order will be of no effect. All relief requested and not expressly granted is denied.

SIGNED this 30th day of October, 1985.

s/ Mike Westergren
JUDGE PRESIDING

APPROVED AS TO FORM:

s/ Thomas M. Schumacher
THOMAS M. SCHUMACHER

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By: s/ Todd A. Hunter
Todd A. Hunter
State Bar No. 10302300

ATTORNEYS FOR DEFENDANT
CORPUS CHRISTI NATIONAL BANK

NO. 85-3424-F

AMANDO G. SALAIZ, ET UX	§	IN THE DISTRICT COURT
	§	
VS.	§	214TH JUDICIAL DISTRICT
	§	
CONSOLIDATED SALES, INC., ET AL	§	NUECES COUNTY, TEXAS

O R D E R

On Oct. 30, 1985, the Court considered the Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction filed in this cause by Defendant Corpus Christi National Bank. All counsel agreed to the waiver of a hearing on the Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction. The Court, having examined the pleadings and the evidence, is of the opinion and finds that Defendant Corpus Christi National Bank is entitled to its Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant MBank Corpus Christi, N.A.'s Plea in Abatement and Motion to Dismiss for Lack of Jurisdiction be granted and that

Defendant recover all costs on its behalf expended of and from Plaintiffs Amando G. and Maria I. Salaiz for which let execution issue, subject to Plaintiffs Amando G. and Maria I. Salaiz repleading their cause of action under federal law, regulations and rules not later than fifteen days from the date of this order in which event this order will be of no effect. All relief requested and not expressly granted is denied.

SIGNED this 30th day of October, 1985.

s/ Mike Westergren
JUDGE PRESIDING

APPROVED AS TO FORM:

s/ Thomas M. Schumacher
THOMAS M. SCHUMACHER

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By: s/ Todd A. Hunter
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State Bar No. 10302300

ATTORNEYS FOR DEFENDANT
MBANK CORPUS CHRISTI, N.A.

NO. 85-312-F

FRANCISCO NUNEZ, JR., ET UX	§	IN THE DISTRICT COURT
	§	
VS.	§	214TH JUDICIAL DISTRICT
	§	
SIDING DISTRIBUTORS OF SOUTH TEXAS, INC., ET AL	§	NUECES COUNTY, TEXAS

O R D E R

On October 30th, 1985, the Court considered the Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction filed in this cause by Defendant Corpus Christi National Bank and Siding Distributors of South Texas, Inc. The Court, having examined the pleadings and the evidence, is of the opinion and finds that Defendants Corpus Christi National Bank and Siding Distributors of South Texas, Inc. are entitled to their Plea In Abatement and Motion to Dismiss for Lack of Jurisdiction.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendants Corpus Christi National Bank and Siding Distributors of South Texas, Inc.'s Plea in Abatement and Motion to Dismiss for Lack of Jurisdiction be granted and that

Defendants recover all costs on their behalf expended of and from Plaintiffs Francisco Nunez, Jr. and Rosa Elena Nunez for which let execution issue, subject to Plaintiffs Francisco Nunez, Jr. and Rosa Elena Nunez repleading their cause of action under federal law, regulations and rules not later than fifteen days from the date of this order in which event this order will be of no effect. All relief requested and not expressly granted is denied.

SIGNED this 30th day of October, 1985.

s/ Mike Westergren
JUDGE PRESIDING

APPROVED AS TO FORM:

s/ Thomas M. Schumacher
THOMAS M. SCHUMACHER

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By: s/ Todd A. Hunter
Todd A. Hunter
State Bar No. 10302300

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CORPUS CHRISTI NATIONAL BANK

s/ Milton W. Walton
MILTON W. WALTON

604 West Broadway
Portland, Texas 78374

ATTORNEY FOR DEFENDANT
SIDING DISTRIBUTORS OF SOUTH
TEXAS, INC.

COURT OF APPEALS
THIRTEENTH SUPREME JUDICIAL DISTRICT
TENTH FLOOR
NUECES COUNTY COURTHOUSE
CORPUS CHRISTI, TEXAS 78401

CHIEF JUSTICE
PAUL W. NYE

CLERK
BETH A. GRAY

JUSTICES
NORMAN L. UTTER
NOAH KENNEDY
ROBERT J. SEERDEN
FORTUNATO P. BENAVIDES
J. DONNER DORSEY

DEPUTY CLERK
CATHY WILBORN

512-888-0416

August 29, 1986

TO ALL ATTORNEYS OF RECORD:

RE: Cause No. 13-86-069-CV
Tr.Ct.No. 84-310-1-F
Juan Davila & Olivia Davila
v.
Corpus Christi National Bank

RE: Cause No. 13-86-070-CV
Tr. Ct. No. 85-3424-1-F
Amando and Maria Salaiz
v. MBank Corpus Christi, N.A.

RE: Cause No. 13-86-125-CV
Tr. Ct. No. 85-312-F
Francisco Nunez, Jr. and
Rosa Elena Nunez
v.
Siding Distributors of
South Texas, Inc. and
Corpus Christi Nat'l. Bank

Dear Attorneys:

The judgments of the trial court in the

above-referenced causes were this day REVERSED AND REMANDED by this Court.

Copies of the opinion and judgment are enclosed.

Very truly yours,

s/ Beth Gray

Beth A. Gray, Clerk

BAG/dac

enclosures

cc: Hon. Thomas M. Schumacher
Hon. Todd A. Hunter
Hon. Gershon M. Ratner
Hon. Carolyn B. Lieberman
Hon. Anthony J. Steinmeyer
Hon. John Herold
Hon. Bruce G. Forrest
Hon. Richard K. Willard
Hon. Milton W. Walton
Hon. Mike Westergren, Presiding Judge
Hon. Oscar Soliz, District Clerk

COURT OF APPEALS

Thirteenth Judicial District

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Appeals, Thirteenth Judicial District of Texas, at Corpus Christi, as of the 29th day of August, 1986. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a Motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 13-86-069-CV (Tr. Ct. No. 84-310-1-F)

JUAN DAVILA AND OLIVIA DAVILA, Appellants,

v.

CORPUS CHRISTI NATIONAL BANK, Appellee.

on appeal to this Court from Nueces County, Texas.

* * * * * * * * *

J U D G M E N T

On appeal from the 214th District Court of Nueces County, Texas, from an order signed October 30, 1985. Opinion by Justice Noah Kennedy. Opinion ordered published. TEX. R. CIV. P. 452.

This cause was submitted to the Court on May 29, 1986, on oral argument, briefs and the record. These having been examined and fully considered, it is the opinion of the Court that there was some error in the judgment of the court below, and said judgment is hereby REVERSED and the cause is REMANDED to the trial court for a trial.

Costs of the appeal are hereby adjudged against appellee, CORPUS CHRISTI NATIONAL BANK. It is further ordered that this decision be certified below for observance.

* * * * * * * * *

BETH A. GREY, CLERK

COURT OF APPEALS

Thirteenth Judicial District

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Appeals, Thirteenth Judicial District of Texas, at Corpus Christi, as of the 29th day of August, 1986. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a Motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 13-86-070-CV (Tr. Ct. No. 85-3424-1-F

ARMANDO G. SALAIZ
AND MARIA I. SALAIZ, Appellants,

v.

MBANK CORPUS CHRISTI, N.A., Appellee.

on appeal to this Court from Nueces County, Texas.

* * * * * * * * *

J U D G M E N T

On appeal from the 214th District Court of Nueces County, Texas, from an order signed October 30, 1985. Opinion by Justice Noah Kennedy. Opinion ordered published.

TEX. R. CIV. P. 452.

This cause was submitted to the Court on May 29, 1986, on oral argument, briefs and the record. These having been examined and fully considered, it is the opinion of the Court that there was some error in the judgment of the court below, and said judgment is hereby REVERSED and the cause is REMANDED to the trial court for a trial.

Costs of the appeal are hereby adjudged against appellee, MBANK CORPUS CHRISTI, N.A. It is further ordered that this decision be certified below for observance.

* * * * * * * * *

BETH A. GREY, CLERK

COURT OF APPEALS

Thirteenth Judicial District

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Appeals, Thirteenth Judicial District of Texas, at Corpus Christi, as of the 29th day of August, 1986. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a Motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 13-86-125-CV (Tr. Ct. No. 85-312-F)

FRANCISCO NUNEZ, JR.
AND ROSA ELENA NUNEZ, Appellants,

v.

SIDING DISTRIBUTORS OF SOUTH TEXAS, INC.,
AND CORPUS CHRISTI NATIONAL BANK, Appellees.

on appeal to this Court from Nueces County, Texas.

* * * * * * * * *

J U D G M E N T

On appeal from the 214th District Court of Nueces County, Texas, from an order signed October 30, 1985. Opinion by Justice Noah Kennedy. Opinion ordered published.

TEX. R. CIV. P. 452.

This cause was submitted to the Court on May 29, 1986, on oral argument, briefs and the record. These having been examined and fully considered, it is the opinion of the Court that there was some error in the judgment of the court below, and said judgment is hereby REVERSED and the cause is REMANDED to the trial court for a trial.

Costs of the appeal are hereby adjudged against appellees, SIDING DISTRIBUTORS OF SOUTH TEXAS, INC., AND CORPUS CHRISTI NATIONAL BANK. It is further ordered that this decision be certified below for observance.

* * * * * * * * *

BETH A. GREY, CLERK

NUMBER 13-86-069-CV
NUMBER 13-86-070-CV
NUMBER 13-86-125-CV

COURT OF APPEALS

THIRTEENTH JUDICIAL DISTRICT OF TEXAS

CORPUS CHRISTI

* * * * * * * *

JUAN DAVILA AND
OLIVIA DAVILA, Appellants,

v.

CORPUS CHRISTI NATIONAL BANK, Appellee.

* * * * * * * *

AMANDO G. SALAIZ AND
MARIA I. SALAIZ, Appellants,

v.

MBANK CORPUS CHRISTI, Appellee.

* * * * * * * *

FRANCISCO NUNEZ, JR. AND
ROSA ELENA NUNEZ, Appellants,

v.

SIDING DISTRIBUTORS OF SOUTH
TEXAS AND CORPUS CHRISTI
NATIONAL BANK, Appellees.

* * * * * * * *

On appeal from the 214th District Court of

Nueces County, Texas.

* * * * * * * *

Before Noah Kennedy, J.; Paul W. Nye, C.J.; and Robert J. Seerden, J.

* * * * * * * * *

O P I N I O N

All of the appellants brought suit against the respective appellees for violations of TEX. REV. CIV. STAT. ANN. art. 5069-6.01 (Vernon 1971), Chapter Six of the Texas Consumer Credit Act. The appellees filed a "Plea in abatement and motion to dismiss for lack of jurisdiction," which the trial court granted. Each appellee argued (1) that the loan transaction is a federal transaction and not a state transaction to which Chapter Six applies, (2) that the loan transaction was made pursuant to the rules and regulations of the Federal Housing Administration, (3) that appellant improperly filed the lawsuit in Texas district courts when it should have been filed in the federal courts, and (4) that the trial court lacked subject matter jurisdiction.

None of the appellants pleaded for any relief outside of the Texas Consumer Credit

Act. Appellants did not plead for relief under any federal cause of action. Appellees contend that suit should have been brought originally in the federal courts. However, appellants have pleaded for relief under a state cause of action, promulgated by the Texas legislature. The district court has jurisdiction over appellants' causes of action. Each appellant alleged an amount in controversy in excess of $7,000.00 and no other Texas court has exclusive original jurisdiction over this action. TEX. CONST. art. V, §§ 8, 16; TEX. GOV'T. CODE ANN. §§ 24, 26 (Vernon 1986); see, e.g., De La Fuente v. Home Savings Association, 669 S.W.2d 137 (Tex. Civ. App.--Corpus Christi 1984. no writ).

The jurisdiction of the federal courts, absent diversity of citizenship, can only encompass "Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...." U.S.C.A. Const. Art. III, § 2; see Ruiz v. Estelle, 679 F.2d

1115, 1157 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); Paris v. Profit Sharing Plan for Employees of Howard B. Wolfe, Inc., 637 F.2d 357, 359 (5th Cir. 1981), cert. denied, 454 U.S. 836 (1981). Appellants' causes of action arise from the laws of Texas.

Further, although there was no petition for removal to the federal courts, appellees' argument and the trial court's orders appear to suggest that the plaintiffs (appellants) should remove the causes to federal court. The United States Court of Appeals for the Fifth Circuit held:

> The well-pleaded complaint rule dictates that a defendnat may not remove a case to federal court unless the plaintiff's complaint establishes that the case "arises under" federal law.... It is insufficient for jurisdictional purposes that the plaintiff asserts that federal law deprives the defendant of a possible defense ... or that the defendant's anticipated defense [emphasis ours] would not serve to defeat the plaintiff's claim....

Dowers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare

Trust, 719 F.2d 760, 764 (5th Cir. 1983). We need not speculate as to the meritoriousness of any potential defense appellees may have pursuant to federal regulations governing Federal Housing Administration loans. However, the existence of a potential defense does not deny the district court jurisdiction and the trial court erred in granting the plea in abatement/motion to dismiss. We sustain appellants' points of error.

The orders of the trial court are reversed and the causes are remanded for a trial.

NOAH KENNEDY
Justice

Opinion ordered published.
TEX. R. CIV. P. 452.

Opinion delivered and filed this
the 29th day of August, 1986.

6-MCCOO2.JHD

NO. 84-310-C

JUAN H. DAVILA, ET UX	§	IN THE DISTRICT COURT OF
	§	
VS	§	NUECES COUNTY, TEXAS
	§	
COASTAL ALUMINUM DISCOUNT CO., ET AL	§	94th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Juan H. Davila and Olivia Davila, Plaintiffs in the above captioned cause, complaining of COASTAL ALUMINUM DISCOUNT CO. and CORPUS CHRISTI NATIONAL BANK, Defendants, and for cause of action would respectfully show the following:

I.

Plaintiffs are residents of Jim Wells County, Texas. COASTAL ALUMINUM DISCOUNT CO., hereinafter called Defendant Seller, may be served with process by serving its office manager at 117 Gibson Lane, Corpus Christi, Texas. CORPUS CHRISTI NATIONAL BANK, hereinafter called CCNB, is a national bank and may be served

with process by serving the bank manager at 502 North Water Street, Corpus Christi, Texas.

II.

On or about April 24, 1980, Plaintiffs entered into a retail installment transaction with Defendant Seller, a retail seller, for the purchase of goods and services. A retail installment contract was signed in connection with the transaction. This retail installment contract was subsequently assigned to, and held by, CCNB.

III.

The transaction described in Paragraph II above is a retail installment transaction, as that term is defined in Section 6.01(e) of the Texas Consumer Credit Code, TEX. REV. CIV. STAT. ANN. art. 5069-2.01 et. seq. (hereinafter called Credit Code), and it is subject to the terms and provisions of Chapter Six of the Credit Code. During the course of the retail installment transaction, the defendants violated

the Credit Code in many respects, including but not limited to, the following:

A. Defendants have contracted for, charged and received time price differential, or finance charge, in excess of the maximum amount permitted by Section 6.02(9)(a) of the Credit Code;

B. Defendants have violated Section 6.05(7) of the Credit Code by taking a first lien on Plaintiff's real estate to secure the obligation;

C. The retail installment contract violates Section 6.02(2) of the Credit Code in that it is not designated "Retail Installment Contract."

D. The retail installment contract violates Section 6.02(2) of the Credit Code in that it fails to contain the following notice:

"KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

E. The retail installment contract violates Section 6.02(3) of the Credit Code in that it fails to provide for an acknowledgement by Plaintiffs of delivery of a copy of the contract is a size equal to at least ten point type directly above their signatures.

F. Defendants violated Section 6.02(11) of the Credit Code by charging and/or receiving default charges in excess of the maximum amount permitted by said section.

IV.

Section 8.01 of the Credit Code provides for a penalty for the foregoing violations of $8,502.58. Said section also provides for the recovery, by Plaintiffs, of a reasonable attorney's fee. A reasonable attorney's fee in the case would be at least $2,500.00.

V.

Defendants also contracted for the right to receive time-price differential, or finance charge, which was in the aggregate in excess of double the total amount of time-price differential authorized by the Credit Code. Therefore, under Section 8.02 of the Credit Code, Plaintiffs are also entitled to recover all principal, time-price differential and other charges contracted for, charged or received by Defendants, plus reasonable attorney's fees actually incurred.

VI.

CCNB, as an assignee and as the current holder of the contract, is jointly and severally liable to Plaintiffs for the aforementioned penalties and attorney's fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the defendants be cited to appear and answer herein; and that upon final trial hereof, they recover judgment against the defendants, jointly and severally, in an amount to which they may show themselves entitled, including

attorney's fees and prejudgment interest. Plaintiffs also pray for any other relief, in law or equity, to which they may show themselves entitled.

Respectfully submitted,

Hector Gonzalez Law Office
4101 U.S. Hwy. 77, Suite 1-4
Corpus Christi, Texas 78410
(512) 241-9536

By: s/ Thomas M. Schumacher
Thomas M. Schumacher
State Bar No. 17851900
ATTORNEY FOR PLAINTIFFS

21-MCC002.AGS

NO. 85-3424-F

AMANDO G. SALAIZ, ET UX	§	IN THE DISTRICT COURT OF
	§	
VS.	§	NUECES COUNTY, TEXAS
	§	
CONSOLIDATED SALES, INC., ET AL	§	214th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Amando G. Salaiz and Maria I. Salaiz, Plaintiffs in the above captioned cause, complaining of Consolidated Sales, Inc. and MBank Corpus Christi, N.A., Defendants, and for cause of action would respectfully show the following:

I.

Plaintiffs are residents of Duval County, Texas. Consolidated Sales, Inc., hereinafter called Defendant Seller, may be served with process by serving the office manager at 5413 Eden Lane in Corpus Christi, Texas. M Bank Corpus Christi, N.A., hereinafter called Defendant Holder, may be served with process by serving

the bank manager on Water Street in Corpus Christi, Texas.

II.

On or about June 18, 1981, Plaintiffs entered into a retail installment transaction with Defendant Seller, a retail seller, for the purchase of goods and services. A retail installment contract was signed in connection with the transaction. This retail installment contract was subsequently assigned to Defendant Holder.

III.

The transaction described in Paragraph II above is a retail installment transaction, as that term is defined in Section 6.01(e) of the Texas Consumer Credit Code, TEX. REV. CIV. STAT. ANN. art. 5069-2.01 et. seq. (hereinafter called Credit Code), and it is subject to the terms and provisions of Chapter Six of the Credit Code. During the course of the retail installment transaction, Defendants violated

the Credit Code in many respects, including but not limited to, the following:

A. Defendants have contracted for time price differential, or finance charge, in excess of the maximum amount permitted by Section 6.02(9)(a) of the Credit Code;

Section 8.01 of the Credit Code provides for a penalty for the foregoing violations of $12,570.80. Said section also provides for the recovery, by Plaintiffs, of a reasonable attorney's fee. A reasonable attorney's fee in the case would be at least $2,500.00.

V.

Defendants also contracted for the right to receive time-price differential, or finance charge, which was, in the aggregate, in excess of double the total amount of time-price differential authorized by the Credit Code. Therefore, under Section 8.02 of the Credit Code, Plaintiffs are also entitled to recover all principal, time-price differential and other charges contracted

for, charged or received by Defendants, plus reasonable attorney's fees actually incurred.

VI.

Defendant Holder, as an assignee and as the current holder of the contract, is jointly and severally liable to Plaintiffs for the aforementioned penalties and attorney's fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the defendants be cited to appear and answer herein; and that upon final trial hereof, they recover judgment against Defendants, jointly and severally, in an amount to which they may show themselves entitled, including attorney's fees and prejudgment interest. Plaintiffs also pray for any other relief, in law or equity, to which they may show themselves entitled.

Respectfully submitted,

Hector Gonzalez Law Office
4101 U.S. Hwy. 77, Suite 1-4
Corpus Christi, Texas 78410
(512) 241-9536

By: s/ Thomas M. Schumacher
Thomas M. Schumacher
State Bar No. 17851900
ATTORNEY FOR PLAINTIFFS

17-MCC002.FNJR

NO. 85-312-F

FRANCISCO NUNEZ, JR., ET UX	§	IN THE DISTRICT COURT OF
	§	
VS.	§	NUECES COUNTY, TEXAS
	§	
SIDING DISTRIBUTORS OF SOUTH TEXAS, INC., ET AL	§	214th JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES FRANCISCO NUNEZ, JR. and Rosa Elena Nunez, Plaintiffs in the above captioned cause, complaining of SIDING DISTRIBUTORS OF SOUTH TEXAS, INC. and CORPUS CHRISTI NATIONAL BANK, Defendants, and for cause of action would respectfully show the following:

I.

Plaintiffs are residents of Duval County, Texas. Siding Distributors of South Texas, Inc., hereinafter called Defendant Seller, is a Texas corporation and may be served with process by serving its registered agent or (sic) service of process, Mr. Larry Starcher, at 215 Westchester, Corpus Christi, Texas.

CORPUS CHRISTI NATIONAL BANK, hereinafter called CCNB, is a national bank and may be served with process by serving its office manager at 502 North Water Street, Corpus Christi, Texas.

II.

On or about January 20, 1981, Plaintiffs entered into a retail installment transaction with Defendant Seller, a retail seller, for the purchase of goods and services. A retail installment contract was signed in connection with the transaction. Pursuant to this contract, Defendant Seller agreed to remodel various parts of the Plaintiffs' house. This retail installment contract was subsequently assigned to, and held by CCNB.

III.

The transaction described in Paragraph II above is a retail installment transaction, as that term is defined in Section 6.01(e) of the Texas Consumer Credit Code, TEX. REV. CIV. STAT. ANN. art. 5069-2.01 et. seq. (hereinafter

called Credit Code), and it is subject to the terms and provisions of Chapter Six of the Credit Code. During the course of the retail installment transactions, the defendants violated the Credit Code in many respects, including but not limited to, the following:

A. Defendants have contracted for, charged and received time price differential, or finance charge, in excess of the maximum amount permitted by Section 6.02(9)(a) of the Credit Code;

B. Defendants have violated Section 6.05(7) of the Credit Code by taking a first lien on Plaintiff's real estate to secure the obligation;

C. The retail installment contract violates Section 6.02(3) of the Credit Code in that it fails to provide for an acknowledgement, by Plaintiff of receipt of a copy of the contract in at least

ten point bold type, directly above her signature.

IV.

Section 8.01 of the Credit Code provides for a penalty for the foregoing violations of $7,100.88. Said section also provides for the recovery, by Plaintiffs, of a reasonable attorney's fee. A reasonable attorney's fee in the case would be at least $2,500.00.

V.

Defendants also contracted for the right to receive time-price differential, or finance charge, which was in the aggregate in excess of double the total amount of time-price differential authorized by the Credit Code. Therefore, Plaintiffs are also entitled to recover all principal or principal balance, as well as all other time-price differential and other charges provided for in the contract, plus reasonable attorney's fees actually incurred.

VI.

CCNB, as an assignee and as the current

holder of the contract, is jointly and severally liable to Plaintiffs for the aforementioned penalties and attorney's fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the defendants be cited to appear and answer herein; and that upon final trial hereof, they recover judgment against the defendants, jointly and severally, in an amount to which they may show themselves entitled, including attorney's fees and prejudgment interest. Plaintiffs also pray for any other relief, in law or equity, to which they may show themselves entitled.

Respectfully submitted,

Hector Gonzalez Law Office
4101 U.S. Hwy. 77, Suite 1-4
Corpus Christi, Texas 78410
(512) 241-9536

By: s/ Thomas M. Schumacher
Thomas M. Schumacher
State Bar No. 17851900
ATTORNEY FOR PLAINTIFFS

LEGISLATIVE HISTORY
P.L. 96-153

HOUSE CONFERENCE REPORT NO. 96-706
* * * * * * * * *
[page 43]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3875) to amend and extend certain federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement ot the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, and the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I--COMMUNITY DEVELOPMENT

SECTION 312 REHABILITATION LOANS

Authorization

The House bill contained a provision authorizing for appropriation for section 312 rehabilitation loans an amount not to exceed $150 million for fiscal year 1980. The Senate amendment contained a provision authorizing for appropriation an amount not to exceed $130 million for Fiscal Year 1980. The conference report contains the Senate provision amended to authorize for appropriation an amount not to exceed $140 million for Fiscal Year 1980.

Limitation on multi-family loans

The House bill contained a provision, not in the Senate amendment, limiting the amount that the Secretary may utilize after October 1, 1979, for rehabilitation loans for multi-family properties to $50 million. The conference report contains a provision limiting the amount that may be utilized for multi-family rehabilitation loans after October 1, 1979, to $75 million.

COMPREHENSIVE PLANNING AUTHORIZATION

The house bill contained a provision authorizing for appropriation for comprehensive planning grants an amount not to exceed $45 million for Fiscal Year 1980. The Senate amendment contained a provision authorizing for appropriation an amount not to exceed $50 million. The conference report contains the Senate provision.

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such report to be transmitted not later than six months after the date of enactment.

The conference report adopts this provision.

Office of elderly housing

The senate amendment contained a provision not found in the House bill which would create within the Office of the Secretary of HUD an Office of Elderly Housing under the direction of an Assistant to the Secetary.

While the conferees did not adopt the Senate provision, they do believe that increased coordination of the Department's response to the housing needs of the elderly is warranted. It is in this regard that the conferees are pleased by the decision of the Assistant Secretary for Housing--FHA Commissioner to appoint a special assistant to coordinate the elderly housing programs of the Department. A special assistant to the Assistant Secretary should

not only enhance coordination both within and outside the Department, but, also should enhance the visibility of the elderly housing activities of the Department. It is the conferees expecttion that the role of the special assistant will be at least comparable to the Director of the Office of Independent Living for the Disabled. The conferees believe that there should be no need to increase staffing nor administrative expenditures to implement this decision.

Waiver of minimum capital requirements

The Senate amendment contained a provision not in the House bill which authorized the Secretary to waive any minimum capital investment requirement imposed in connection with the program for housing for the elderly. The conference report does not contain the Senate provision. However, the conferees wish to emphasize that the Secretary should not set such minimum capital investment requirements at a level which would unduly restrict access to the program of sponsors which (1) have a creditable reputation for

satisfactory job performance; (2) have not defaulted on any contract; (3) have proven stability in the community and have community acceptance and support; and (4) have the endorsement of the appropriate local or state authorities.

NEIGHBORHOOD REINVESTMENT CORPORATION

The House bill provided authorization for appropriations not to exceed $9.5 million for the Neighborhoood (sic) Reinvestment Corporation for Fiscal Year 1980, while the Senate amendment provided authorization for appropriations not to exceed $12 million for Fiscal Year 1980. The conference report contains the Senate provision.

EXEMPTION FROM STATE USURY LAWS

Both the House bill and the Senate amendment contained a provision exempting any loan, mortgage or advance made under title I of II of the National Housing Act from state and local usury laws.

The conferees wish to indicate that the phrase "interest, discount points or other charges" contained in the provision includes

credit sale finance charges, and the phrase "loan, mortgage or advance" includes installment credit sale obligations. The provision applies to all types

of obligations insured under Titles I and II, including those evidenced by installment credit sale agreements. The provision does not, however, preempt any state law limiting or otherwise regulating refinancing or prepayment penalties, or the calculation of prepayment rebates or credits.

The conferees are aware that, in general, installment credit sale contracts have been criticized for frequently containing provisions which do not adequately protect consumers. However, the conferees note that with respect to such contracts used to finance mobile homes under Title I of the National Housing Act,

FHA regulations already provide significant protections by prohibiting both the Rule of 78 and balloon payments, and by limiting late charges. FHA also provides an interest rate ceiling. In addition, the conferees are pleased by the decision of the Assistant Secretary for Housing--FHA Commissioner to amend FHA's mobile home regulations to provide at least a 30 day notice prior to instituting any action leading to repossession and/or foreclosure (except in the case of abandonment), and to insert into the mobile home park approval instructions, a requirement prohibiting unfair or prejudicial marketing methods, procedures, requirements or practices.

STUDY OF ALTERNATIVES

The Senate amendment contained a provision requiring the Secretary to conduct a study of alternatives to the present system of fixed statutory maximum amounts for mortgages insured by HUD under Titles I and II of the National Housing Act, and report to the Congress with

recommendations for legislation not later than March 1, 1980. The House bill contained no similar provision. The conference report contains the Senate provision, amended to clarify that the Secretary, when examining the use of sales price data, need not limit this examination to median sales price data.

MODIFICATION OF GRADUATED PAYMENT MORTGAGE PROGRAM (GPM)

Title

The Senate amendment included a provision not contained in the House bill to title the modifications to the GPM Programs contained in this section as "The Home Ownership Opportunity Act of 1979". The conference report adopts the Senate provision.

Findings of Congress

The Senate amendment, but not the House bill, included a provision establishing the findings of Congress for modifying the existing GPM Program. The conference report does not contain the Senate provision.

New GPM program

The Senate amendment contained a provision which provided that notwithstanding the present requirement that the principal obligation including deferred payments of the insured loan not exceed 97 percent of original apprised value of the property, the Secretary may insure a mortgage with varying rates of amortization where (1) the principal obligation of the mortgage or loan initially does not exceed the percentage of the apprised value of the property in section 203(b)

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